

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

UNITED STATES OF AMERICA,)
Complainant,)
)
v.) 8 U.S.C. 1324a Proceeding
) Case No 95A00037
)
KANON ASSOCIATED SERVICES,)
INC.,¹)
Respondent.)

**FINAL DECISION FINDING LIABILITY AND
ORDER ON PROCEDURE
(September 21, 1995)**

MARVIN H. MORSE, Administrative Law Judge

Appearances: Terry C. Bird, Esq., for Complainant
Mark J. Newman, Esq., for Respondent

I. PROCEDURAL HISTORY

On March 2, 1995, the Immigration and Naturalization Service, (INS or Complainant) filed its Complaint in the Office of the Chief Administrative Hearing Officer (OCAHO). The Complaint alleged five counts, including both substantive and paperwork violations, involving Kanon Service Corporation's (KSC or Respondent) failure to comply with § 274A of the Immigration Reform and Control Act (IRCA), as amended, 8 U.S.C. § 1324a. The total civil money penalty requested, which tracked the Notice of Intent to Fine (NIF) issued by INS on December 22, 1994, is \$56,550. INS also requests that an Order issue directing Respondent to cease and desist from violating § 1324a.

On April 19, 1995, Respondent filed an Answer to the Complaint in which it denied all allegations. The Answer included a Motion to Dismiss the Complaint because, according to Respondent, it is not the proper party in interest; the allegations listed in the Complaint "involved a completely separate and unrelated entity, to-wit, Kanon Associated Services, Inc., . . ." not KSC. Answer and Motion at 1.

1 The caption has been altered to reflect Complainant's
successful Motion to Amend to list Kanon Associated Services, Inc.
as the correct party in interest, not Kanon Service Corporation,
as previously alleged.

On May 19, 1995, I issued an Order of Inquiry inviting each party to file pleadings including documentary evidence to support or refute Respondent's statement. In addition, Complainant was directed to advise in writing whether it accepted or contested the submission by Respondent.

Complainant's Response to the Order of Inquiry, filed on June 9, 1995, stated that it contested the submission by Respondent on the grounds "that Respondent, Kanon Service Corporation, and another entity, named in Respondent's answer as Kanon Associated Services Inc. [KAS], are not 'completely separate and unrelated' entities but were in fact, at all times complained of, at least related companies with significant shared management and ownership." Cplt. Response at 1. In order to prove its assertion, Complainant requested, and I granted on June 12, 1995, an extension of time to file a more complete response to the Order of Inquiry.

Complainant's Further Response and accompanying brief in support were timely filed on August 8, 1995. Complainant requested that "the part of the NIF and Complaint relating to named respondent be amended to read 'Kanon Associated Services' instead of 'Kanon Services Corporation.'" In support of its Motion to Amend, Complainant included copious evidence to show that "[t]he line between the two companies was so invisible that it was difficult for even employees to know whether they were working for KAS or KSC." Cplt. Br. at 2.

On September 12, 1995, Respondent filed a response to Complainant's filings in which it recited that it "has no objection to the Complainant's Motion to Amend and, in fact, joins in that Motion." Resp. Response at 1. In addition, Respondent states that "[i]f this court grants the Complainant's Motion and names the appropriate Respondent, Kanon Associates Services, Inc., . . . then KAS withdraws the previously filed request for a hearing before this Honorable Court." Id. Finally, Respondent states that "it will admit the allegations in the Notice of Intent to Fine and in the Complaint . . . [and] understands that by virtue of its admissions a judgment shall be entered in the amount stated in the Notice of Intent to Fine and in the Complaint." Id.

II. ULTIMATE FINDINGS, CONCLUSIONS AND ORDER

On the basis of Respondent's admissions in its Response, I find and conclude that Respondent is liable on all five counts of the Complaint. I also grant Respondent's implicit motion to withdraw its request for hearing. Whether understood as in effect a withdrawal by Respondent of its request for hearing or as a "confession of judgment," there is no need to undertake "consideration" of the statutory factors set out at 8 U.S.C. § 1324a(e)(5). Consequently, as understood by Respondent, a civil money penalty will be adjudged against Respondent in the amount listed in the Complaint and the NIF.

I have considered the Complaint, Answer, pleadings, motions and documentary materials submitted by the parties. All motions and other requests not previously disposed of are denied. Accordingly, as previously found above, I determine and conclude upon a preponderance of the evidence:

1. that Complainant's Motion to Amend the Complaint is granted;

2. that Respondent admits liability for all five counts of the Complaint, as amended;

3. that Respondent's Motion to Withdraw its Request for Hearing is granted;

4. that it is appropriate to enter a civil money penalty judgment against Respondent in the amount listed in the Complaint and NIF:

a. Count I: knowingly hiring and/or continuing to employ three named individuals for a total of \$3,150 (\$1,050 for each individual);

b. Count II: failure to ensure that employees properly completed section 1 of the Form I-9 (Employment Eligibility Verification Form) for two named individuals for a total of \$400 (\$200 for each individual);

c. Count III: failure properly to complete section 2 of the Form I-9 for nine named individuals for a total of \$1,800 (\$200 for each individual);

d. Count IV: failure to ensure that employees properly completed section 1, and failure properly to complete section 2 of the Form I-9 for three named individuals for a total of \$600 (\$200 for each individual);

e. Count V: failure to prepare or present the Form I-9 or failure to make available for inspection the Form I-9 for 253 named individuals for a total of \$50,600 (\$200 for each individual);

For a total civil money penalty of \$56,550;

5. that Respondent cease and desist from knowingly employing or continuing to employ aliens not authorized for employment in the United States in violation of 8 U.S.C. § 1324a;

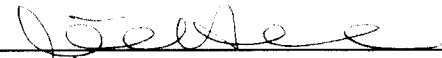
6. that the hearing previously scheduled is hereby cancelled.

This Final Decision Finding Liability and Order on Procedure is the final action of the judge in accordance with 8 U.S.C. § 1324a(e)(7) and 28 C.F.R. § 68.52(c). As provided at 28 C.F.R. § 68.53(a)(2), this action shall become the final order of the

Attorney General unless, within thirty days from the date of this Order, the Chief Administrative Hearing Officer shall have modified or vacated it. Both administrative and judicial review are available to parties adversely affected. See 8 U.S.C. §§ 1324a(e)(7), (8) and 28 C.F.R. § 68.53.

SO ORDERED.

Dated and entered this 21st day of September, 1995.



Marvin H. Morse
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the attached Final Decision Finding Liability and Order on Procedure were mailed first class, postage prepaid, this 21st day of September, 1995, addressed as follows:

Counsel for Complainant

Terry C. Bird, Esq.
Immigration and Naturalization Service
P.O. Box 5108
Atlanta, GA 30302-5108

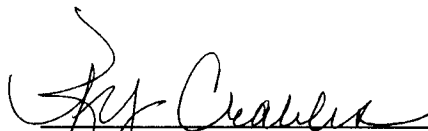
Dea Carpenter, Esq.
Associate General Counsel
Immigration and Naturalization Service
425 "I" Street, NW, Room 6100
Washington D.C. 20536

Counsel for Respondent

Dale M. Schwartz, Esq.
Mark J. Newman, Esq.
Troutman Sanders
600 Peachtree St., N.E.
Suite 5200
Atlanta, GA 30308-2216

Office of the Chief Administrative Hearing Officer

5107 Leesburg Pike, Suite 2519
Falls Church, VA 22041



Karen Y. Crabbs
Attorney Advisor to Judge Morse
Office of the Chief Administrative
Hearing Officer
5107 Leesburg Pike, Suite 2519
Falls Church, VA 22041
Telephone No. (703) 305-0861

Doc 295C/10

